

# Notice of Allowability

Application No.

10/053,030

Examiner

Daniel Zirker

Applicant(s)

FLECK ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Responses (2) of 5/11/04.
2. ☒ The allowed claim(s) is/are 1,3-8,10 and 11.
3. ☒ The drawings filed on 29 January 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

DANIEL ZIRKER  
PRIMARY EXAMINER  
GROUP 1900- 1700

*Daniel Zirker*

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1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. Authorization for this Examiner's Amendment was given in a telephone interview with Scott S. Servilla on May 20, 2004.

IN THE ABSTRACT

In line 2, after "includes a" insert --rigid polystyrene foam--.

IN THE SPECIFICATION

In paragraph [0004], line 3, after "foamed" insert --rigid--;

in line 6, after "foamed" insert --rigid--.

In paragraph [0009], line 8 after "backing" insert --is adhered to the plug--;

in line 10 after "trademark for a" insert --rigid--.

In paragraph [0013], line 3, after "such as a" insert --rigid--.

IN THE CLAIMS

In claim 1, line 2, after "made of" insert --rigid--, and after "into" insert --and repair--;

in line 4 after "material" insert --adhesively--.

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In claim 7, line 3, after "made of" insert --rigid--;  
in line 4, after "foam" insert --adhesively--.

4. The following is an examiner's statement of reasons for allowance:

The Examiner notes that the above amendments to the Abstract, Specification, and Claims, each revising elements of applicant's two After Final Amendments which have both been entered, are believed to place the application in condition for allowance. It is noted that in line with the provided Merriam-Webster's Dictionary definition of "Styrofoam" the plug has been amended to define as being made from "rigid polystyrene foam". Additionally, the amendments relating to the plug material of rigid polystyrene foam being "adhesively affixed" to the adhesive backing finds clear support in the original application at Section "3) Claim Info:" and "3) How E Z Patch works:" sections.

The Examiner also believes that the relied upon prior art rejection based upon D'Alisa et al. in Paragraph No. 5 is unduly hindsight oriented, as stated by applicant, failing to disclose or render obvious such essential elements as the rigid polystyrene foam plug adhesively attached to an adhesive backing.

Finally, upon reconsideration, the Examiner does not believe that it is necessary to impose a size range to the adhesive plug in order to tip the scales towards patentability for both the

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claimed article and accompanying method.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is (571) 272-1486. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for this Group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free).

Dzirker:cdc

May 24, 2004